THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.26311 OF 2006

DATED: 26-03-2007

BETWEEN

Shahjahan Begum, W/o. Mohd. Jahangir,
R/o. 10-5-391/54/12/1, Syed Nagar,
Ist Lancer, Hyderabad.

...PETITIONER

AND

The Commissioner of Police,
Basheerbagh, Hyderabad
and others.

...RESPONDENTS

ORDER:

Petitioner is the mother of one Mohd. Tasheen, who died in the early hours of 01.05.2006. According to the petitioner, her deceased son might have died by reason of assault on him in view of the nature of the injuries sustained by him. Her son was in the company of Khaleel, Shakeel, Rizwan, Shabaz and Rizwan and the said persons had quarreled with her son, which led to the death of her son.

2. Counter has been filed stating that based on the wireless message received from Sri Naveen Kumar, Sub Inspector of Police, Tappachaputhra Police Station that an accident occurred at Gudimalkapur, the Inspect of Police, Asifnagar rushed to the spot and found the son of the petitioner, Mohd. Tasheen, near the electrical pole and another person, Rizwan, fell down away from the pole and a Pulsar motorcycle bearing No. AP 9 AR 4081 was found at a distance of 8 feet and they were in unconscious

condition. Meanwhile, the ambulance came and shifted the injured (Rizwan) to Apollo Hospital, Jubilee Hills and Mohd. Tasheen, who appears to be found dead, was shifted to Osmania General Hospital, where the doctors declared that he was brought dead. It is stated that the investigation made so far revealed that Mr. Rizwan was driving the vehicle and Tasheen was pillion rider and both of them were in drunken condition. While they were coming through Gudimalkapur due to his uneven movements Rizwan could not control the vehicle and applied sudden break, due to which both of them fell down and Tasheen's head collided with an electrical pole. It is stated that the statement of Rizwan was recorded and the investigation made so far, prima facie, goes to show that there is no material available to register the case under Section 302 of the Indian Penal Code, 1860. The petitioner filed a private complaint, which was referred to the police, but the police immediately returned it stating that a case had already been registered on the same matter in Cr.No.118 of 2006 under Section 304-A IPC.

3. If a private complaint is filed, it is for the concerned Magistrate to call for a report on the pending case and thereafter he can proceed both on the private complaint as well as the complaint lodged before the police as if both are filed on a police report. However, the petitioner has got a remedy under the relevant provisions of the Code of Criminal Procedure, 1973. As and when, if any facts and circumstances are forthcoming to the effect that it is not a case under Section 304-A IPC but the case relates to another offence, it is always open for the police to alter the charge. However, in the absence of any material, this Court cannot grant any relief to the petitioner.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

March 26, 2007
DSK